

6-230A012

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RECORDATION NO. Filed 1425

AUG 18 1986 - 11 30 AM

INTERSTATE COMMERCE COMMISSION

No.

Date AUG 18 1986

Fee \$ 30.00

ICC Washington, D.C.

August 8, 1986

Registered Mail
Return Receipt Requested

Ms. Noreta McGee
Secretary of the Interstate
Commerce Commission
12th and Constitution Avenue Northwest
Washington, D.C. 20423

Dear Ms. McGee:

I have enclosed three original counterparts of a Security Agreement dated as of August 8, 1986 covering railway equipment which you are hereby requested to record, pursuant to Section 11303 of Title 49 of the U.S. Code and pursuant to 49 CFR Part 1177, under the name of Delta Investments. Also enclosed is a check in the amount of \$30.00 to pay the recordation fee. The original document and any extra counterparts when filed should be returned to:

J. Cabell Acree, III
Bracewell & Patterson
2900 South Tower Pennzoil Place
Houston, Texas 77002

(1) The name and address of the Mortgagee (Secured Party) is:

Primus Corporation
2727 Allen Parkway
Suite 860
Houston, Texas 77019
Attn: Jeffrey Alan Toole

(2) The name and address of the Mortgagor (Debtor) is:

Delta Investments
2727 Allen Parkway
Suite 860
Houston, Texas 77019
Attn: Jeffrey Alan Toole

ICC OFFICE OF
THE SECRETARY
AUG 18 11 26 AM '86
MOTOR OPERATING UNIT

SECURITY AGREEMENT

AUG 18 1986 - 11 30 AM

INTERSTATE COMMERCE COMMISSION

Section I. Collateral and Obligations.

To secure the performance and payment of all obligations and indebtedness of the undersigned Delta Investments, a Texas general partnership ("Borrower") to Primus Corporation, a Texas corporation ("Lender"), 2727 Allen Parkway, Suite 860, Houston, Texas 77019, evidenced by the promissory note executed by Borrower in the original principal amount of \$230,000.00 payable to the Lender and dated August 8, 1986 ("Note"), Borrower hereby grants to Lender a security interest in the property hereinafter described and all proceeds, products, distributions, payments, profits, increases, substitutions, replacements, renewals, additions, amendments and accessions thereof, thereto, therefrom or therefor, including any stock rights to subscribe, liquidating dividends or other dividends, property or rights, which Borrower may hereafter become entitled to receive on account of securities pledged hereunder (all such property, proceeds, products, distributions, payments, profits, increases, substitutions, replacements, renewals, additions, amendments and accessions are hereinafter collectively called "Collateral"):

- (1) Five (5) Class DOT-111A 100W-3 23,500 gallon, general purpose non-pressure tank cars, exterior coiled and insulated having serial numbers GLNX 23151, GLNX 23166, GLNX 23153, GLNX 23154 and GLNX 23155 ("Cars");
- (2) All right, title and interest now owned or hereafter acquired by Borrower in and to that certain Railroad Tank Car Lease dated as of August 1, 1982 between Borrower and Harold D. Caldwell, in and to any other leases of the Cars between Borrower and Harold D. Caldwell, and in and to any other leases of the Cars between Borrower and any other person ("Leases");
- (3) All right, title and interest now owned or hereafter acquired by Borrower in and to any management agreement concerning the leasing of the Cars to which Borrower is now, or may become, a party.

Section II. Payment Obligations of Borrower.

Borrower shall pay to Lender when due any amount which may be due from Borrower to Lender. Borrower shall account fully and faithfully to Lender for all distributions, payments, profits and proceeds of or from the Collateral and shall upon demand pay or turn over promptly in money, instruments, drafts, assigned accounts or chattel paper all such distributions, payments, profits and proceeds to be applied to Borrower's indebtedness to Lender, subject, if other than cash, to final payment or collection.

Section III. Borrower's Representations, Warranties and Agreements.

Borrower represents, warrants and agrees that:

1. All information supplied and statements made by Borrower or any other person to Lender in connection with any obligation or indebtedness hereby secured, or any information supplied by Borrower or any other person in any financial, credit, accounting or other statement or certificate or application for credit are and shall be true, correct, complete, valid and genuine. Borrower shall keep accurate and complete records of the Collateral, shall give Lender or its representatives access to such records at all times and shall provide such other information concerning the Borrower and the Collateral as the Lender may require. The address of Borrower's place of business, residence, chief executive office and office where Borrower keeps his records concerning his accounts, contract rights and general intangibles is set forth beside Borrower's signature hereon. Borrower shall immediately notify Lender of any discontinuance of or change in such address, any change in the location of his place of business, residence, chief executive office or office where he keeps such records, and any change in his name.

2. No certificate of title, financing statement, filing with the Interstate Commerce Commission ("ICC"), the Association of American Railroads, the Department of Transportation or other government or industry authority or other filing or document showing any lien on or security interest in the Collateral except that of Lender is or will be outstanding or on file at any time. Borrower has good and marketable title to the Collateral, subject only to the security interest of Lender and subject to no other security

interest, encumbrance or restriction whatsoever. Attached hereto as Exhibit "A" is a true and correct copy of each of the Leases, which are currently in full force and effect in the form set forth in such Exhibit. The Borrower will not permit to occur any amendment, other modification or termination of the Leases and will otherwise keep the Leases in full force and effect. Borrower has full power and lawful authority to sell and assign the Collateral and to grant to Lender a first and prior security interest therein as herein provided, and Borrower will defend the Collateral against the claims and demands of all third persons. Borrower will not grant any security interest in or lien on or otherwise transfer, dispose of, encumber or restrict the transferability of any right, title or interest now owned or hereafter acquired by Borrower in or to the Collateral, except for the security interest granted hereby to Lender. The Collateral (i) is genuine, free from default, prepayment or defenses and all persons appearing to be obligated thereon are bound thereon as they appear to be from the face thereof; and (ii) complies with applicable laws. The description of the Cars contained in Section I hereof is an accurate description of the type of railway equipment that the Cars constitute, the A.A.R. mechanical designation, if any, of the Cars, all identifying marks on the Cars and the serial numbers of the Cars, sufficient in all respects to comply with the requirements of any applicable regulations. Borrower will take all necessary steps to preserve the liability of account debtors, obligors and secondary parties whose obligations are a part of the Collateral. Within ten (10) days of its receipt thereof, Borrower will deliver to Lender copies of all notices that relate to the Collateral that are delivered to Borrower. Within thirty (30) days of written request by Lender to Borrower, Borrower will, at its cost and expense, cause to be plainly, distinctly, permanently and conspicuously placed, fastened or painted upon each side of each Car a legend bearing the following words (and/or such other words as may be requested by Lender) in letters not less than one inch in height:

"PRIMUS CORPORATION, HOUSTON, TEXAS,
IS THE HOLDER OF A VALID SECURITY INTEREST
OF FIRST PRIORITY ON THIS CAR."

3. Lender's duty with reference to the Collateral in Lender's possession shall be solely to use reasonable care in the physical preservation of such Collateral. Lender shall not be responsible in any way for any depreciation in

the value of the Collateral, nor shall any duty or responsibility whatsoever rest upon Lender to take necessary steps to preserve rights against prior parties. Protest and all demands and notice of any action taken by Lender under this Security Agreement, or in connection with any Collateral, except as otherwise provided in this Security Agreement, are hereby waived, and any indulgence of Lender, substitution for, exchange or release of any person liable on the Collateral is hereby assented and consented to. Lender may inspect at any time the Collateral and Borrower's books and records pertaining to the Collateral. Borrower shall assist Lender in making any such inspection. The Collateral will not be misused, wasted or allowed to deteriorate, except for the ordinary wear and tear in connection with its intended primary use, and will not be used in violation of any statute, regulation or ordinance. The Collateral will not be affixed to any real estate or other goods so as to become fixtures or accessions.

4. Borrower will maintain at all times (i) insurance with respect to all Cars covering physical loss or damage from any cause whatsoever in an amount of \$63,000 for each Car, with a deductible of not more than \$5,000 per occurrence; (ii) liability insurance of at least \$500,000, with a deductible of not more than \$5,000 per occurrence; (iii) umbrella-type insurance coverage in an amount not less than \$10,000,000; and (iv) such other insurance as Lender may reasonably request from time to time. Borrower shall furnish Lender with certificates or other evidence of insurance required hereby. Unless otherwise agreed to by the Lender in writing, no such insurance shall be payable to any person other than Lender or Borrower. Lender may act as attorney for Borrower in settling any claim in connection with such insurance and endorsing any draft drawn by any insurer of the Collateral. If any insurance required hereby expires or otherwise is not in full force and effect at any time and Borrower fails to obtain replacement insurance, Lender may, but need not, obtain replacement insurance (which may, at Lender's option, cover only the interest of Lender), pay the premiums therefor, add the amount of such premiums to the indebtedness secured hereby and, to the extent permitted by law, charge interest thereon at a rate of 10% per annum. Borrower agrees to reimburse Lender on demand for the amount of such premiums and such interest. Policies evidencing any required property insurance shall contain a standard mortgagee's endorsement providing for payment of any loss to Lender and shall provide for a

minimum of ten (10) days prior written notice to Lender of any cancellation. Lender may at its option (i) apply any proceeds of insurance which may be received by Lender in payment on account of the indebtedness and obligations secured hereby, whether due and payable or not, and take control of proceeds and use cash proceeds to reduce any part of the indebtedness and obligations secured hereby, in such order as it elects, whether or not due and payable or (ii) remit such proceeds to the Borrower.

5. Except for (i) the Leases and any leases in which the Lender has a valid and perfected security interest of first priority, (ii) the Railroad Tank Car Lease dated as of August 1, 1982 between Harold D. Caldwell and WKG Holdings, Inc. and (iii) liens for taxes not yet due or payable and mechanic's, carrier's, workman's or repairman's liens arising in the ordinary course of the Borrower's business securing obligations which are not yet due and payable (provided, however, that the aggregate of all amounts secured by any liens permitted by this clause (iii) shall not exceed \$6,000), unless otherwise agreed to by the Lender in writing, none of the Collateral will be sold, leased, rented or otherwise transferred, encumbered or disposed of or be subjected to any unpaid charge, including rent and taxes, or to any other interest of any person (other than Lender), whether existing with or without the consent of the Borrower, and the transferability of the Collateral will not be restricted except as provided in this Security Agreement. Borrower will do, make, procure, execute and deliver all acts, things, writings and assurances as Lender may at any time request to protect, assure or enforce its interest, rights and remedies created by or arising in connection with this Security Agreement, including, without limitation, the execution of Financing Statements, applications for certificates of title, filings with the ICC or any other authority and like documents. Without notice or demand from Lender, Borrower agrees to deliver to Lender all certificates of title pertaining to Collateral as to which a certificate of title has been or may be issued.

6. Borrower will not create, incur, assume or suffer to exist, any obligations, indebtedness, or liabilities of whatever kind or however or whenever created, except (i) the obligations and indebtedness of the Borrower described in Section I hereof and (ii) current liabilities for accounts payable and expense accruals incurred or assumed in the ordinary course of business which shall not remain unpaid for a period of ninety (90) days after such liabilities

become due and payable or which shall be contested by the Borrower in good faith on advice of counsel if adequate reserves with respect thereto shall have been established.

7. Borrower will not make any loan or advance to any person or entity or purchase, or otherwise acquire any common or preferred stock or other security of any entity. In addition, Borrower shall not make any distribution of cash or property, including, without limitation, any distributions of cash or property to any of Borrower's now or hereafter existing partners in respect of any partnership interest of any of Borrower's now or hereafter existing partners.

8. The execution, delivery and performance of this Security Agreement, the Note and all other instruments and agreements executed by Borrower are within Borrower's power and authority and are not in contravention of law or any indenture, agreement or undertaking to which Borrower is a party or by which Borrower is bound.

9. Borrower agrees that in performing any act under this Security Agreement and any note, guaranty agreement or other obligations secured hereby, time shall be of the essence and Lender's acceptance of partial or delinquent payments, or failure of Lender to exercise any rights or remedy, shall not be a waiver of any obligation of Borrower or right of Lender or constitute a waiver of any other similar default subsequently occurring.

Section IV. Rights of Lender.

1. Lender may, in its discretion, after default hereunder: (i) terminate, on notice to Borrower, Borrower's authority to sell, lease, otherwise transfer, manufacture, process or assemble or furnish under contracts of service, inventory Collateral or any other Collateral as to which such authority has been given; (ii) notify any account debtor or obligors on instruments to make payments directly to Lender; (iii) contact account debtors or obligors on instruments directly to verify information furnished by Borrower; (iv) transfer or register any of the Collateral in the name of Lender or its nominee and, whether or not so transferred or registered, exercise any or all voting rights appertaining to any of the Collateral, and receive any income, property, rights or dividends on account thereof, including cash and stock dividends, liquidating dividends

and rights to subscribe; (v) bring any action at law or in equity to protect its interest in the Collateral or to obtain damages for or to prevent deterioration or destruction of the Collateral other than ordinary wear and tear in connection with its intended primary use; and (vi) make demand for payment of, file suit on, make any compromise or settlement with respect to, collect, compromise, endorse or otherwise deal with the Collateral in its own name or the name of the Borrower. Lender may, before or after default hereunder, apply any proceeds of insurance which may be received by Lender in payment on account of the indebtedness and obligations secured hereby, whether due or not, and take control of proceeds and use cash proceeds to reduce any part of the indebtedness and obligations secured hereby, in such order as it elects, whether or not due and payable.

2. At its option, Lender may make payments to discharge taxes, liens or security interests or other encumbrances at any time levied or placed on the Collateral and take any other action necessary to obtain, preserve, and enforce the security interest and the rights and remedies granted in this Security Agreement and maintain and preserve the Collateral. Such payments and any other expenses incurred by Lender in taking such action shall become, to the extent permitted by law, part of the indebtedness and obligations secured by this Security Agreement. Borrower agrees, to the extent permitted by law, to reimburse Lender on demand for the amount of such payments and any other expenses or costs incurred by Lender including, without limitation, any interest the Lender may lawfully charge on such payments and other expenses.

3. Upon the occurrence of an Event of Default, and at any time thereafter, Lender may declare all obligations secured hereby immediately due and payable, without notice of any kind, including without limitation, notice of intent to accelerate and notice of acceleration, Borrower hereby waiving notice of any kind, including, without limitation, notice of intent to accelerate and notice of acceleration, and shall have the rights and remedies of a secured party under the Uniform Commercial Code of Texas including the right to sell, lease or otherwise dispose of any or all of the Collateral in any manner allowed by such Uniform Commercial Code. Lender may require Borrower to assemble the Collateral and make it available to Lender at a place to be designated which is reasonably convenient for both parties; and Lender shall have the right to take possession with or

without prior notice to Borrower, of all or any part of the Collateral or any security therefor and of all books, records, papers and documents of Borrower or in Borrower's possession or control relating to the Collateral and may enter upon any premises upon which any of the Collateral or any security therefor or any of such books, records, papers or documents are situated and remove the same therefrom without any liability for trespass or damages thereby occasioned. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender will send Borrower reasonable notice of the time and place of any public sale or other disposition thereof or of the time after which any private sale or other disposition thereof is to be made. The requirement of sending reasonable notice shall be met if such notice is deposited in the U.S. Mail, postage prepaid, addressed to Borrower at the address shown beside the Borrower's signature hereon at least five (5) days before the time of the sale or disposition. Borrower shall be liable for all expenses, including without limitation, reasonable attorneys' fees and court costs, actually incurred by Lender in repossessing, storing, preparing for sale, lease or other disposition, or selling, leasing or otherwise disposing of the Collateral. The Collateral may be sold, leased or otherwise disposed of as an entirety or in such parcels as Lender may elect, and it shall not be necessary for Lender to have actual possession of the Collateral or to have it present when the sale, lease or other disposition is made. Lender may deliver to the purchasers or transferees of the Collateral a Bill of Sale or Transfer, binding Borrower forever to warrant and defend title to such Collateral. Borrower shall remain liable for any deficiency.

4. Lender may remedy any default and may waive any default without waiving the requirement that the default be remedied and without waiving any other default. The remedies of the Lender are cumulative, and the exercise or partial exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of any of the other remedies of Lender. No delay of Lender in exercising any power or right shall operate as a waiver thereof.

5. This Security Agreement, Lender's rights hereunder or the indebtedness hereby secured may be assigned from time to time, and in any such case the assignee shall be entitled to all of the rights, privileges and remedies granted in this Security Agreement to Lender.

6. Lender may execute, sign, endorse, transfer or deliver in its own name or in the name of Borrower, notes, checks, drafts or other instruments for the payment of money and receipts, certificates of origin, applications for certificates of title or any other documents necessary to evidence, perfect or realize upon the security interest and obligations created by this Security Agreement.

Section V. Events of Default.

Borrower shall be in default under this Security Agreement upon the happening of any of the following events or conditions (herein called an "Event of Default"):

1. Failure of Borrower, any of Borrower's now or hereafter existing partners, or any endorser, guarantor, surety, accommodation party or other person liable upon or for payment of any indebtedness or obligation secured by this Security Agreement (each hereinafter called an "Other Liable Party") to pay within 5 days from the date when due any indebtedness due to Lender or to perform punctually any other obligation, covenant, term or provision contained in or referred to in this Security Agreement, any note or other agreement secured hereby or any other agreement executed in connection with this Security Agreement or any note secured hereby;

2. Any warranty, representation or statement contained in this Security Agreement or made or furnished to Lender by or on behalf of Borrower or any Other Liable Party proves to have been false in any respect when made or furnished;

3. Any loss, theft, substantial damage, destruction or unauthorized sale or other unauthorized transfer of any of the Collateral occurs or the Collateral is subjected to any lien or encumbrance including, without limitation, any storage, artisan's, mechanic's or landlord's lien or any levy, seizure or attachment;

4. Death, dissolution, termination of existence, insolvency or business failure of Borrower or any Other Liable Party occurs, or a receiver of all or any part of the property of Borrower or any Other Liable Party is appointed or an assignment is made for the benefit of the creditors of Borrower or any Other Liable Party or a meeting of creditors for Borrower or any Other Liable Party is called or any proceeding under any bankruptcy or insolvency laws by or against Borrower or any Other Liable Party is commenced;

5. Any event occurs which results in the acceleration of the maturity of the indebtedness of Borrower or any Other Liable Party to others under any indenture, agreement or undertaking;

6. The Borrower or any Other Liable Party fails to comply with any provision of any agreement with or obligation to the Lender or there occurs any default or "Event of Default" thereunder; or

7. An Event of Default (as defined in that certain First Amended and Restated Security Agreement dated as of August 8, 1986 executed by Lender and First City National Bank of Houston ("Bank") ("Primus Security Agreement")) occurs under the Primus Security Agreement and an Event of Default has not occurred under Section V, paragraph 1, 2, 3, 4, 5 or 6 of this Security Agreement. Notwithstanding any provision of this Security Agreement to the contrary, upon the Bank's declaration of an event of default under this paragraph 7, the Bank's rights under this Security Agreement and the Note shall be limited only to the rights and remedies that the Bank has under this Security Agreement and under the Uniform Commercial Code of Texas in the Collateral; the Borrower shall not remain liable for any deficiency existing after such rights and remedies have been asserted by the Bank. This limitation on the Bank's rights and remedies applies only to the situation in which the Bank declares an Event of Default under this paragraph 7 and in no way limits the Bank's rights under this Security Agreement, the Note, any other agreement, or otherwise, including, without limitation, the right to sue the Borrower for any deficiency that may exist after the Bank has sold or otherwise disposed of the Collateral, upon the occurrence of (i) an Event of Default under the Primus Security Agreement and (ii) an Event of Default under this Security Agreement other than an Event of Default under this paragraph 7.

Section VI. Additional Agreements.

1. "Lender", "Borrower" and "Other Liable Party" as used in this Security Agreement include the heirs, executors or administrators, successors, representatives, receivers, trustees and assigns of those parties. Unless the context otherwise requires, terms used in this Security Agreement which are defined in the Uniform Commercial Code of Texas are used with the meanings as therein defined. The division of this Security Agreement into sections and subsections has

been made for convenience only and shall be given no substantive meaning or significance whatever in construing the terms and provisions of this Security Agreement. The law governing this secured transaction shall be that of the State of Texas.

2. If any provision of this Security Agreement is rendered or declared invalid, illegal or ineffective by reason of any existing or subsequently enacted legislation or by decree of a court of competent jurisdiction, such legislation or decree shall not impair, invalidate or nullify the remainder of this Security Agreement which shall remain in full force and effect.

3. Any notice or demand to Borrower hereunder or in connection herewith may be given and shall conclusively be deemed and considered to have been given and received upon the deposit thereof, in writing, duly stamped and addressed to Borrower at the address set forth below, in the U.S. Mail; but actual notice, however given or received, shall always be effective.


Executed as of this 8th day of August, 1986.

Address:
2727 Allen Parkway
Suite 860
Houston, Texas 77019

DELTA INVESTMENTS,
a Texas general partnership

By: The 1971 Goettsche Family
Trust for the benefit of
Karen C. Goettsche
Title: General Partner

By: Sterling Standard Trust
Company
Title: Trustee of the 1971
Goettsche Family Trust for the
benefit of Karen C. Goettsche

By: 
Name: Jeffrey Alan Toole
Title: President of Sterling
Standard Trust Company

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Jeffrey Alan Toole, known to me to be the person whose name is subscribed to the foregoing instrument, as President of Sterling Standard Trust Company, Trustee of the 1971 Goettsche Family Trust for the benefit of Karen C. Goettsche, a partner of Delta Investments, a Texas general partnership, and being first duly sworn acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity stated, and as the act and deed of said partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 8th day of August, 1986.

(S E A L)

Laura K. Speer
Notary Public, the State of
T E X A S

Name: Laura K. SPEER
(print name)

My Commission Expires: 3/25/89

17JCASH

RAILROAD TANK CAR LEASE

THIS AGREEMENT, dated as of the 1st day of August, 1982, by and between DELTA INVESTMENTS, a Texas general partnership having its principal place of business at 2727 Allen Parkway, Houston, Texas 77019 (the "Lessor") and HAROLD D. CALDWELL, a resident of Harris County, Texas, having an address at 4615 Post Oak Place, Houston, Texas 77027 (the "Lessee").

W I T N E S S E T H:

1. Lease of Cars. The Lessor hereby agrees to lease to the Lessee, and the Lessee hereby agrees to lease and hire from the Lessor, for the term and for the rental amounts specified in Section 2 of this Lease, five Class DOT-111A 100V-3 23,500 gallon, general purpose non-pressure railroad tank cars, exterior coiled and insulated, having serial numbers GLNX 23151, GLNX 23153, GLNX 23154, GLNX 23155, and GLNX 23166 (the "Cars").

2. Term of Lease; Rental. The term of this Lease shall be the period beginning on August 1, 1982 and ending on June 30, 1987 (the "Term"). During the Term, Lessee agrees to pay to the Lessor at the principal office of the Lessor in Houston, Texas, rental in an aggregate amount equal to \$11,000 per calendar quarter, such rental to be payable on the last day of the month following the calendar quarter.

3. Inspection of Car. Each of the Cars shall be subject to Lessee's inspection before loading; and the successful loading of such Car shall constitute acceptance thereof by Lessee, and shall be conclusive evidence (i) of the fit and suitable condition of such Car for the purpose of transporting the commodities then and thereafter loaded therein, and (ii) that it is one of the Cars described in Section 1 of this Lease.

4. Responsibility of Lading. Lessor shall not be liable for any loss of, or damage to commodities, or any part thereof, loaded or shipped in the Cars, however such loss or damage shall be caused or shall result. Lessee agrees to assume responsibility for, to indemnify Lessor against, and to save it harmless from, any such loss or damage, or claim therefor.

5. Damage to Car Resulting From Lading. In the event any of the Cars, or the appurtenances thereto, including the interior lining for Cars so equipped, shall become damaged by the commodity loaded therein, Lessee agrees to assume the responsibility for such damage.

6. Alteration and Lettering. Lessee will preserve the Cars in good condition and will not in any way alter the physical structure of the Cars without the advance approval in writing of Lessor. Lessee shall place no lettering or marking of any kind upon the Cars without Lessor's prior written consent, except that, for the purpose of evidencing the operation of the Cars in Lessee's service hereunder, or for meeting Department of Transportation shipping regulations for commodities being transported in the Cars, Lessee will be permitted to board and placard or stencil the Cars with letters not to exceed two inches (2") in height.

7. Maintenance. Lessee agrees to maintain each of the Cars in good, safe and efficient working order, reasonable wear and tear excepted, and acceptable for use in unrestricted interchange service and in compliance with all applicable rules of the Interchange Rules of the Association of American Railroads ("AAR"), concerning the maintenance, repair, safety and operation of railcars. Except as may otherwise be provided in Section 8 hereof, the Lessee shall be responsible for and shall promptly repair at its expense any car which shall become damaged as a result of wreck, derailment, collision, fire or other casualty.

8. Damaged, Destroyed, Lost or Stolen Cars. If any of the Cars shall be completely destroyed, or if the physical condition of any Car shall become such that it cannot be operated in railroad service as determined by the parties, or if any of the Cars shall become lost or stolen, the Lessee will pay Lessor in cash the replacement value of such car within ten (10) days following a request by Lessor for such payment. Lessee agrees that at all times during the term of this Lease, it will maintain policies of casualty insurance in amounts equal to the replacement value of the Cars, and such policies shall name Lessor as an additional insured as its interest may appear.

9. Indemnity. Lessee will indemnify Lessor against any loss, damage, claim, expense (including attorney's fees and expenses of litigation), or injury imposed on, incurred by, or asserted against Lessor arising, directly or indirectly, out of Lessee's or any sublessee's use, lease, possession, or operation of the Cars occurring during the term of this Lease, or by the contents of such Cars, howsoever occurring, except any loss, liability, claim, damage, or expense which is directly attributable to the fault or neglect of the Lessor, or for which a railroad or railroads have assumed full responsibility and shall have satisfied such responsibility. All indemnities contained in this Lease shall survive the termination hereof, however same shall occur.

10. Governmental and Industrial Regulations. Lessee agrees to comply with all governmental laws, rules, regulations, and requirements, and with the Interchange Rules of the AAR with respect to the use and operation of each of the Cars during the term of this Lease.

11. Return of Cars. Upon the expiration or termination of this Lease as to any of the Cars, Lessee agrees to return each of the Cars in good working order, ordinary wear and tear excepted, free from all charges and liens which may result from any act or default of Lessee, to Lessor at the point of delivery or at a point mutually agreed upon, free from residue and complete with all parts, equipment, and accessories with which the Car was originally equipped or which had been added during the term of the Lease, and to give Lessor advance written notice of such return. Lessee shall, on demand, reimburse Lessor for the cost of cleaning any Cars not properly cleaned or containing residue.

12. Reports. Lessee shall, within ten (10) days after notification to Lessee, give Lessor written notice of any injury to either persons or commodities which involve the Cars.

13. Additional Charges by Railroads. Lessee agrees to use the Cars, upon each railroad over which the Cars shall move, in accordance with the then prevailing tariffs to which each such railroad shall be a party; and, if the operation or movements of any of the Cars during the term hereof shall result in any charges being made against Lessor by any such railroad, Lessee shall pay Lessor for such charges within the period prescribed by and at rates and under the conditions established by said then prevailing tariffs. Lessee agrees to indemnify Lessor against same and shall be liable for any switching, demurrage, track storage, or detention charge imposed on any of the Cars during the term hereof.

14. Taxes and Liens. Lessee agrees to pay all property taxes levied upon the Cars and to file all property tax reports relating thereto. Lessee agrees to report and pay, in addition to rent, all sales, use leasing, operation, excise and other taxes with respect to the Cars, together with any penalties, fines, or interest thereon, all duties, taxes, investment tax credit reductions, and similar charges arising out of use of the Cars outside the United States. Lessee agrees not to encumber or dispose of this Lease or of any of the Cars or any part of a Car or permit any encumbrance or lien to be entered or levied upon any of the Cars, with the exception of a security interest in the Cars held by First City National Bank of Houston, pursuant to a Security Agreement dated as of August 1, 1982.

15. Assignment; Sublease. Lessee agrees to use the Cars exclusively within the boundaries of the continental United States (exclusive of Alaska and Hawaii), Canada and Mexico. In the event the Cars are used outside of the area specified, Lessee agrees to bear full responsibility for, to defend, and to reimburse Lessor for any loss, damage, and/or cost and expenses suffered by Lessor, or claim against Lessor and for all costs and expenses, including legal costs and attorney's fees arising in any way from such Car movement.

The Lessor acknowledges and understands that the Lessee may sublet any or all of the Cars to any other person, organization or agency. Notwithstanding any such subletting, Lessee shall at all times remain fully responsible and liable for the payment of the rent herein specified and for compliance with all of Lessee's other obligations under this Lease.

Subject always to the foregoing, this Agreement inures to the benefit of, and is binding upon, the Lessor, its successors and assigns, and the Lessee, its successors and assigns.

16. Default. If the Lessee shall make default in the payment of rental on any of the Cars at the time when same become due and payable or shall make default in the performance or observance of any of the other agreements herein contained, and such default shall continue for ten (10) days after Lessee has received notice of default from Lessor or there shall be filed by or against Lessee a petition in bankruptcy or for reorganization under the Bankruptcy Law or there shall be a receiver appointed of any part of Lessee's property or Lessee shall make general assignment for the benefit of creditors, then and in any of said events, Lessor, at its election, may, upon notice of termination to Lessee, terminate the Lease set forth herein and repossess itself of any or all of said Cars, and this Lease shall thereupon become and be terminated. In the alternative, Lessor may, without notice, repossess itself of said Cars and re-let the same or any part thereof to others for such rent and upon such terms as it may see fit; and if a sufficient sum shall not be thus realized after repaying all expenses of re-taking and re-letting said Cars (including attorney's fees and expenses of litigation) and collecting the rentals thereof to satisfy the rental and service charges herein reserved, the Lessee agrees to satisfy and pay the deficiency accrued from time to time upon demand. The obligation to pay such deficiency as well as the obligation for any and all other payments by Lessee to Lessor called for by this Lease shall survive any termination of this Lease for whatever reason and/or such retaking of the Cars. Lessee shall, without expense to Lessor, assist it in repossessing itself of said Cars and shall, for a reasonable time if required, furnish suitable trackage space for the storage of said Cars. The rights and remedies herein

given to Lessor shall in no way limit its rights and remedies given or provided by law or in equity.

17. Notice. All notices provided for herein, as well as all correspondence pertaining to this Lease, shall be considered as properly sent if given: (a) in writing and delivered personally or sent by registered or certified mail, or (b) by telex or cable and confirmed thereafter in writing sent by registered or certified mail. The respective addresses for notice shall be the addresses of the parties given at the outset hereof. Such addresses may be changed by either party giving written notice thereof to the other.

18. Miscellaneous. LESSOR MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, WITH RESPECT TO THE CARS, THEIR MERCHANTABILITY, THEIR FITNESS FOR A PARTICULAR PURPOSE, INFRINGEMENT OR OTHERWISE.

This instrument constitutes the entire agreement between Lessor and Lessee and it shall not be amended, altered or changed except by written agreement signed by the parties hereto.

All rights of Lessor hereunder may be assigned, pledged, mortgaged, transferred, or otherwise disposed of, either in whole or in part, and/or Lessor may assign, pledge, mortgage, transfer, or otherwise dispose of title to the Cars without notice to Lessee. In the event of any such assignment, pledge, mortgage, transfer, or other disposition, this Lease and all of Lessee's rights under this Lease and all rights of any person, firm, or corporation who claims or who may hereafter claim any rights under this Lease under or through Lessee are hereby made subject and subordinate to the terms, covenants, and conditions of any chattel mortgages, security agreements, conditional sale agreements, equipment trust agreement, and/or assignments covering the Cars or any of them heretofore or hereafter created and entered into by Lessor, its successor or assigns, and to all of the rights of any such chattel mortgagee, assignee, trustee, secured party, or other holder of the legal title to the Cars. At the request of Lessor or any chattel mortgagee, assignee, trustee, secured party, or other holder of the legal title to the Cars, the Cars may be lettered or marked to identify the legal owner of the Cars at no expense to Lessee. If, during the continuance of this Lease, any such marking shall at any time be removed or become illegible, wholly or in part, Lessee shall immediately cause such marking to be restored or replaced at Lessor's expense.

This instrument is subject and subordinate to any chattel mortgage, conditional sales agreement, whether heretofore or hereafter created, and specifically the security interest in the Cars of First City National Bank of Houston.

This Agreement shall be governed and construed by the laws of the State of Texas.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed and delivered the day and year first above written.

LESSOR:

DELTA INVESTMENTS, a Texas general partnership

By Wayne K. Goettsche
WAYNE K. GOETTSCHKE, General Partner

LESSEE:

Harold D. Caldwell
HAROLD D. CALDWELL